



01 FEB 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

| | | |
|----------------------------------------|---|----------|
| In re Application of ROUXEL et al | : | |
| U.S. Application No.: 10/587,908 | : | |
| PCT Application No.: PCT/FR2004/003378 | : | |
| Int. Filing Date: 23 December 2004 | : | DECISION |
| Priority Date Claimed: 30 January 2004 | : | |
| Attorney Docket No.: W51.12-0032 | : | |
| For: MULTI-MODULATION RECEPTION | : | |
| METHOD ... | : | |

This is in response to applicant's "Response to Decision on Petition by Joint Inventor(s) Filing on Behalf of Other Joint Inventor(s) Who Refuse(s) to Join in Application or Cannot be Reached (37 C.F.R. § 1.47(a))" filed 31 December 2007.

BACKGROUND

On 23 December 2004, applicant filed international application PCT/FR2004/003378, which claimed priority of an earlier France application filed 30 January 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 09 September 2005. The thirty-month period for paying the basic national fee in the United States expired on 30 July 2006.

On 28 July 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 April 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 18 June 2007, applicant filed a petition under 37 CFR 1.47(a).

On 29 June 2007, this Office mailed a decision dismissing the 18 June 2007 petition.

On 31 December 2007, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Petitioner has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventor Damien Pouessel cannot be located. The renewed petition adequately demonstrates that a diligent effort was made to find Pouessel. Attempts were made to reach Pouessel by postal mail (see 06 May 2007 affidavit of Patrice Vidon), by contacting Pouessel's former employer (see 31 December 2007 affidavit of Patrice Vidon, ¶5), and by searching telephone directories (see 31 December 2007 Vidon affidavit, ¶6), but all of the attempts were unsuccessful. Thus, it can be concluded with reasonable certainty that Pouessel cannot be located after diligent effort.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 23 December 2004 and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 18 June 2007.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

A handwritten signature in black ink, appearing to read "Bryan Lin".

Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303

Facsimile: 571-273-0459



01 FEB 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Damien Pouessel
14, avenue Croix Guérin
14000 CAEN
FRANCE

In re Application of ROUXEL et al
U.S. Application No.: 10/587,908
PCT Application No.: PCT/FR2004/003378
Int. Filing Date: 23 December 2004
Priority Date Claimed: 30 January 2004
For: MULTI-MODULATION RECEPTION
METHOD . . .

Dear Damien Pouessel:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Bryan Lin
Bryan Lin
PCT Legal Examiner
PCT Legal Office
Telephone: 571-272-3303
Facsimile: 571-273-0459

WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319
Attorney Docket No.: W51.12-0032